



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2022

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P. Nos.3942, 3945, 3947, 3950 & 3951 of 2022
&
W.M.P.Nos.4085, 4088, 4089, 4092 & 4093 of 2022

M/s. Tiruchirappalli Engineering and Technology Cluster,
Represented by its Managing Director,
P2, Adjacent to GK Industrial Park Pvt. Ltd.
Siruganoor, Reddimangudi Village, Lalgudi Taluk,
Trichy, District - 621 105.

...Petitioner in all W.Ps.

Vs.

Deputy Director General of Foreign Trade,
O/o The Additional Director General of Foreign Trade,
Shastri Bhawan, Haddows Road,
Chennai - 600 006.

...Respondent in all W.Ps.

Prayer in W.P.No.3942 of 2022.: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, and call for the records pertaining Order-In Original issued from F.No.04/21/021/00509/AM13 dated 06.01.2022 issued by the respondent imposing penalty in addition to the Customs duty and interest on the petitioner and quash the same.

Prayer in W.P.No.3945 of 2022.: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, and call for the records pertaining Order-In Original issued from F.No.04/21/021/00431/AM13 dated 06.01.2022 issued by the respondent imposing penalty in addition to the Customs duty and interest on the petitioner and quash the same.

Prayer in W.P.No.3947 of 2022.: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, and call for the records pertaining Order-In Original issued from F.No.04/21/021/00432/AM13 dated 07.01.2022 issued by the respondent imposing penalty in addition to the Customs duty and interest on the petitioner and quash the same.



Prayer in W.P.No.3950 of 2022.: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, and call for the records pertaining Order-In Original issued from F.No.04/21/021/00485/AM13 dated 07.01.2022 issued by the respondent imposing penalty in addition to the Customs duty and interest on the petitioner and quash the same.

Prayer in W.P.No.3951 of 2022.: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, and call for the records pertaining Order-In Original issued from F.No.04/21/021/01080/AM13 dated 07.01.2022 issued by the respondent imposing penalty in addition to the Customs duty and interest on the petitioner and quash the same.

In all W.Ps.

For Petitioner	:	Ms.V.Pramila
For Respondents	:	Mr.K.SrinivasaMuthy Senior Panel Counsel

COMMON ORDER

The petitioner is the Tiruchirappali Engineering and Technology Cluster and comprises nearly 1000 (approx) exporters. Constituents of the petitioner cluster had been granted licences under the Export Promotion Capital Goods Scheme in 2012 that provides for a concessional rate of duty for import of capital goods upon satisfaction of certain conditions imposed under the scheme.

2. The respondent issued show cause notices to the petitioner on 17.10.2019 and 19.12.2019 listing the matter for hearing on 30.12.2019 calling upon the petitioner to show cause why the aforesaid licences not be cancelled, since the petitioners, according to the respondents, had not carried out exports within the stipulated time frame, being six years, that had expired in 2018. The petitioner appears to have, by communication dated 27.12.2019, sought time to respond, stating that it awaited the required details from its members and would produce the same before the authorities once received.

3. Thereafter, there has been no notice or notice of personal hearing issued by the authority in the matter and the authority has instead proceeded straightaway to pass impugned orders dated 06.01.2022 holding the petitioner ex-parte. The



petitioner, has, admittedly, complied with the notice and followed the matter up with a letter dated 03.01.2020 where they undertook to produce the required particulars within thirty days.

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4. The respondent has, under the impugned order, imposed penalties for non-submission of documents in terms of Section 13 of Foreign Trade (Development and Regulation) Act, 1992 ('Act') read with Foreign Trade (Development and Regulation) Amendment Act, 2010, in addition to customs duty and interest thereon. The authority also orders that no further licences, authorizations or export incentives shall be granted to the petitioner cluster, or to the exporters, in terms of the Act. Aggrieved by the same, the petitioner has filed the present writ petition.

5. Learned counsel for the petitioner urges gross violation in procedure as well as the principles of natural justice, seeing as the impugned order has been passed on 06.01.2022 in relation to show cause notices issued on 17.12.2019/19.12.2019. Learned counsel appearing for the respondents has filed a counter affidavit and draws attention of this Court to paragraph 14 thereof, wherein the authority reiterates the non-fulfilment of export obligations by the petitioner.

6. The stand of the respondents is that they had acceded to the request of the petitioner for time which was only for thirty days, awaiting the documents till 06.01.2022. Finding then that no documents had been filed, they had proceeded to pass the impugned order. It is, incidentally, not in dispute that the petitioner has not produced any material in support of exports by its members till date.

7. Though the respondent may well be right in his conclusion, I am of the considered view that proper procedure has not been followed in the present case. There has been substantial elapse of time between the issuance of the notices and the passing of the orders and the proper course of the action would have been for the authority to have heard the petitioner proximate to the date of passing of the order. This would enable the notice to appraise the authority in regard to events that have been transpired in the interim and also serve as an opportunity to recapitulate the material events as the authority is, at the end of the day, only human and cannot be expected to recall and remember facts, details and fine points over so many months, in this case, 24 months.

8. For the aforesaid reasons and as a measure of balancing the interests of both parties, I set aside the impugned order permitting the petitioner to submit all particulars as sought



for by the authority in the notices issued, within a period of six weeks from today i.e. on or before 16th of May 2022. The authority shall consider the material, if any, filed by the exporters and revise the impugned order in line thereof and in accordance with law. It is made clear that if no materials are filed by the petitioner exporters by the aforesaid date, impugned order dated 06.01.2022 will stand revived automatically without further reference to the.

9. These writ petitions are disposed as above. Consequently connected miscellaneous petitions are also closed. No costs.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

nst/ska

To

Deputy Director General of Foreign Trade,
O/o The Additional Director General of Foreign Trade,
Shastri Bhawan, Haddows Road,
Chennai - 600 006.

+5ccs to M/s.V.Pramila, Advocate, S.R.Nos.19662 to 19666

+1cc to Mr.K.Srinivasamurthy, Advocate, S.R.No.19765

W.P. Nos.3942, 3945, 3947, 3950 & 3951 of 2022
&
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PM(CO)
SU(02/05/2022)